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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,225	10/30/2003	Mary Elizabeth Davis	9396	9781

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EXAMINER

CHAPMAN, GINGER T

ART UNIT PAPER NUMBER

3761

DATE MAILED: 07/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/697,225

Applicant(s)

DAVIS ET AL.

Examiner

Ginger T. Chapman

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 1-6 and 13-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-25 are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The **abstract** should be in narrative form and generally limited to a single paragraph on a separate sheet **within the range of 50 to 150 words**. **It is important that the abstract not exceed 150 words in length** since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The abstract of the disclosure is objected to because **the abstract exceeds 150 words**.

Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102/ Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Underhill et al (2003/0114821 A1) in view of Neading et al (2001/0049513 A1).

With respect to claim 7, as seen in Figure 4. Underhill et al discloses a disposable absorbent article (21) having a longitudinal axis, two laterally opposed article side edges extending between a laterally extending first waist end edge in a first waist region and a laterally extending second waist end edge in a second waist region, and a crotch region interposed therebetween (p. 1, [0008]; p. 3, [0037]), the disposable absorbent article (21) comprising: a backsheet (149); a topsheet (151) joined to the backsheet (149) and having a body-facing surface (fig. 2); an absorbent core (153) disposed intermediate the backsheet (149) and the topsheet (151); at least one wetness sensation member (167) integrated with the topsheet (151) such that a portion of the topsheet (151) covering a portion of the absorbent core (153) forms a permeable

Art Unit: 3761

body-facing layer of the wetness sensation member (p. 7, [0068, 0071], the wetness sensation member (167) also including a flow control layer (181) disposed between the permeable body-facing layer and the absorbent core (p. 7, [0064]) in a face-to-face arrangement with the permeable body-facing layer and having two laterally opposed flow control layer side edges (p. 7 [0067], at least a portion of each of the two flow control layer side edges being disposed laterally inwardly of the article side edges (p. 7, [0067]); wherein urine deposited by the wearer onto the wetness sensation member can penetrate through the permeable body-facing layer in a z direction away from the wearer to the flow control layer and the flow control layer retards the passage of the urine through the wetness sensation member in the z direction and supports the movement of the urine in an x-y plane such that the wearer's awareness of urination is enhanced (p. 7, [0071; p. 1, [0003])).

Underhill et al do not disclose a visible highlighting. Neading et al teach a visible highlighting (14) indicating a presence of the wetness sensation member (16) in the disposable absorbent article and being visible at least when viewing the body-facing surface of the topsheet (p. 2, [0026, 0027]). Neading et al, at p. 1, [0005, 0010] expresses the desire and motivation for a wetness indicator to indicate a visible response in the presence of fluid thereby indicating that the diaper is wet. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the wetness sensation member of Underhill et al having visible highlighting as taught by Neading et al in order to provide a visible indicator of urine in the diaper since Neading et al state at page 2 [0026] that such visible highlighting provides an immediate indicator that the child has excreted waste and soiled the diaper.

Claims 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Underhill in view of Neading and further in view of Roe et al (US 6,627,786).

With respect to claims 8-9, the combination of Underhill and Neading discloses the article having at least one wetness sensation member but does not disclose a plurality of the members spaced apart from one another by a spacing ranging from about 5 mm to about 15 mm. As seen in Figures 6a and 6b, Roe teaches the members (50a, 50b) spaced apart by a spacing ranging from about 5 mm to about 15 mm (col. 8, ll. 54-67 to col. 9, ll. 1-5). At column 1, lines 55-63 Roe expresses the desire and motivation for an article that can facilitate toilet training by enhancing a wearer's awareness that urination has occurred while at the same time preventing soiling or leakage. Roe teaches that the benefit of spacing the wetness sensation members is that the spacing allows enough liquid to pass through to the core to prevent flooding that can result in leakage of the article during urination while at the same time enable enough liquid to flow to the wetness sensation members to enhance the wearer's awareness that urination has occurred. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to space the wetness sensation members of Underhill and Neading by a spacing ranging from about 5 mm to 15 mm as taught by Roe et al, since Roe teaches at col. 8, ll. 39-42 that such a position enables the member to be wetted with urine and held in contact with the wearer's skin thereby enhancing the wearer's awareness that urination has occurred.

With respect to claims 10-12, the combination of Underhill and Neading discloses the article having wetness sensation members but does not expressly disclose the topsheet comprising Z-folds. As seen in Figures 7a and 7b, Roe et al teach the topsheet (24) comprising Z-folds (90a, 90b) spaced apart by a spacing ranging from about 50 mm to about 90 mm (col. 9,

ll. 58-59) and comprising elastic members (92a, 92b) disposed along the two flow control layers of each of the wetness sensation members disposed within a respective one of the Z-folds (fig. 7b). Roe et al teach that the Z-folded configuration and the elastic elements maintain the wetness sensation member against the wearer's skin thereby enhancing the wearer's awareness that urination has occurred even when the diaper sags around the wearer. It would therefore have been obvious to one having ordinary skill in the art at the time the invention was made to form the topsheet of Underhill and Neading comprising Z-folds as taught by Roe in order to provide wetness sensation members held in contact with the wearer's skin thereby enhancing the wearer's awareness that urination has occurred.

Double Patenting

Claim 7 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 6-8 of copending Application No. 10/815,918. Although the conflicting claims are not identical, they are not patentably distinct from each other because all features of the instant invention are disclosed in the '918 claim.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

Applicant's arguments filed 11 April 2006 have been fully considered but they are not persuasive. Applicant submits the following:

Applicant presumes the abstract is acceptable. This argument is not persuasive because as detailed in the previous Office action, the abstract exceeds 150 words.

Applicant submits that Neading teaches a visible highlighting indicating a presence of a wetness sensation member being visible when viewing the body facing surface of the topsheet but Neading does not teach a wetness indicator on the body facing surface of the topsheet and the visible change in response to the wetness is provided around the article periphery and not the body facing surface of the topsheet as recited in independent claim 7.

This argument is not persuasive because Neading teaches the wetness indicator is visible at least when viewing the body-facing surface of the topsheet, thus Neading discloses the wetness indicator visible from the vantage point as recited in claim 7. Further, Neading discloses the claimed invention except for it is located on the periphery of the body facing surface and it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Applicant submits that Neading wetness indicator is provided visually and not by providing a physical sensation of wetness while the wetness indicator of Underhill provides a physical sensation of wetness to indicate that wetness has occurred. Applicant further submits that there is no motivation to combine Underhill with Neading because the resulting article would provide a wetness indicator providing both a visual indication and a physical sensation of wetness to indicate that urination has occurred.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5

USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this instance, both Neading at p. 1, [0005, 0010] and Underhill at p. 1 [0003, 0004] are motivated to provide an indication that urination has occurred for purposes of toilet training the child.

Applicant argues that the awareness of urination is directly tied to the control of fluid penetration not to a visible wetness indicator, as explained in the specification. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the control of fluid penetration) are not recited in the rejected claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant argues the existence of a wetness based response may be forgotten about in the absence of visible highlighting to serve as a feedback reminder to encourage the caregiver to facilitate toilet training thus the visible highlighting serves as a reminder of the feel wet feature of the wetness sensation member.

In response to applicant's argument that the claimed visible highlighting serves as a reminder of the claimed feel wet feature of the wetness sensation member, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Thus both Neading and Underhill express the desire to provide an immediate indicator that the child has excreted waste and soiled the diaper. The combination of Underhill and

Neading disclose a toilet training article providing at least one wetness sensation member and a visible highlighting indicating a presence of the wetness sensation member and the visible highlighting is visible at least when viewing the body facing surface of the topsheet of the toilet training article.

Applicant defers addressing the provisional double patenting rejection on the merits until such time as one or more of the conflicting claims are issued.

Applicant has not presented any rebuttal to double patenting rejection; therefore there is no response to arguments. Applicant should submit an argument under the heading "Remarks" pointing out disagreements with the examiner's contentions. Applicant must also discuss the co-pending application claims applied against the claim, explaining how the claim avoids the co-pending application claims or distinguish from them.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginger T. Chapman whose telephone number is (571) 272-4934. The examiner can normally be reached on Monday through Friday 8:30 a.m. to 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ginger Chapman
Examiner, Art Unit 3761
06/21/06



TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

